

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 14, 2001

TO: PARTIES OF RECORD IN CASE 01-04-028

This proceeding was filed on April 9, 2001, and is assigned to Commissioner Brown and Administrative Law Judge (ALJ) Glen Walker. This is the decision of the Presiding Officer, ALJ Walker.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ LYNN T. CAREW
Lynn T. Carew, Chief
Administrative Law Judge

LTC:tcg

Attachment

PRESIDING OFFICER'S DECISION (Mailed 11/14/2001)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Skip and Gail Thomson,

Complainants,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 01-04-028
(Filed April 9, 2001)

O P I N I O N

1. Summary

Complainants object to their telephone service being transferred to the Dixon exchange from the Vacaville exchange, to which they had been assigned in error. They urge that the Local Access and Transport Area (LATA) boundaries be redrawn for the Dixon and Vacaville exchanges so that they may retain their current telephone number. Pacific Bell Telephone Company (Pacific) states that it is required by its tariffs to place complainants in their correct LATA. Complainants have failed to show a violation of the law or of any order or rule of the Commission, as required by Pub. Util. Code § 1702. Efforts to settle this complaint have been unsuccessful. Accordingly, the complaint is dismissed.

2. Background

The facts are not in dispute.

In May 2000, Skip and Gail Thomson complained to Pacific that a neighbor had received a Vacaville exchange telephone number, while others in the neighborhood had been assigned Dixon exchange numbers. Pacific began an investigation to determine whether telephone numbers in the neighborhood

were correctly assigned. The investigation identified 19 customers in the Dixon exchange who had incorrectly been given Vacaville exchange numbers (including the Thomsons), and three customers in the Vacaville exchange who had incorrectly been assigned Dixon exchange numbers. Pacific blamed the error on inaccuracies in the database used to associate addresses with the correct exchange.

Pacific notified the 22 customers that their numbers would be changed to the correct Vacaville or Dixon exchange. Pacific stated that it would make the changes without charge and it would provide number referrals for six months at no cost to the subscribers. Pacific stated that the changes are required in order for the company to comply with its tariffs and to provide only local telephone service.

This complaint was filed on April 9, 2001. A status conference was conducted by the assigned Administrative Law Judge (ALJ) in Fairfield on May 18, 2001. Pacific argued at that time that it had no authority to change the LATA boundary between Vacaville and Dixon, nor did it have authority to continue to permit those located in one exchange to receive local service through a neighboring exchange. However, Pacific agreed to make no change in complainants' telephone number until the resolution of this complaint.

By ALJ Ruling dated June 25, 2001, parties were asked to respond to further questions. Following receipt of the responses, an evidentiary hearing was scheduled in Vacaville on October 25, 2001, a date selected by the complainants. The hearing was called to order on that date, but complainants, without explanation, failed to appear. The ALJ, after unsuccessfully exploring the possibility of settlement, took testimony from one Pacific witness, received one exhibit into evidence, and declared that the case was deemed submitted for determination.

3. Discussion

No disputed issues of fact have been alleged in this case. It follows that the Commission may determine this case as a matter of law. To do so, a brief history is in order.

After divestiture of the Bell System in 1984, and as a result of the Modified Final Judgment (MFJ) of the United States District Court for the District of Columbia, all Bell territory in the continental United States was divided into geographic areas called LATAs. Under the Court's decision, Bell Operating Companies were permitted to provide telephone service within a LATA (intraLATA service), but were not permitted to carry traffic across LATA boundaries (interLATA service). InterLATA traffic was to be carried by interexchange carriers.

Under the MFJ, the Dixon exchange became a part of Sacramento Service Area, and the Vacaville exchange became part of the San Francisco Service Area. Because there is a Service Area boundary between those exchanges, the calls placed between the exchanges are interLATA calls. Pacific can only provide intraLATA service. Thus, Pacific is precluded from giving someone located in the Dixon exchange local calling authority within the Vacaville exchange.

Complainants argue in their pleadings that Pacific in the past has petitioned the Federal Communications Commission (FCC) for changes in LATA boundaries, and that this Commission has provided for expanded local calling (called Extended Area Service, or EAS) on a showing of community need. (*See, e.g., Schwarzer v. Pacific Bell* (1993) 51 CPUC2d 422; *Willits v. Contel* (1993) 51 CPUC2d 449.) However, the EAS procedure on which complainants principally rely is no longer available. In Decision (D.) 98-06-075, the Commission in 1998 ceased accepting EAS complaints on grounds, among others, that intraLATA toll competition, authorized in 1995, gave consumers a wider choice of carriers and

cost for local toll calls. The Commission's EAS evaluations also had formed the basis for any request by Pacific to the FCC to change a LATA boundary. (*See* FCC Order, CC Docket No. 96-159, 12 FCC Rcd 10646 (1997).) Since the Commission no longer considers EAS requests, Pacific has no Commission evaluation upon which to base a petition to the FCC for a change in LATA boundaries.

Complainants are residents of Vacaville, and they state that changing their telephone number to a Dixon exchange will mean that their telephone bill will be higher because many of their routine calls to Vacaville numbers will become interLATA toll calls. They acknowledge, however, that they have a choice of carriers and a choice of prices for interLATA calls, and they have a cellular telephone they can use on an extended area basis. Pacific states that other subscribers whose numbers will change may or may not face higher bills, since previous local calls will become interLATA toll calls, but previous interLATA calls will become local calls.

It is unfortunate that Pacific made the mistake of assigning a Vacaville exchange number to complainants when they reside in the Dixon exchange. Once the mistake became known, however, the record shows that Pacific had no choice but to correct the error if it was to comply with its own tariffs and with the prohibition on providing interLATA service. Efforts to devise some form of settlement were unavailing.

Section 1702 of the Public Utilities Code provides that a complaint must set forth "any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the [C]ommission." No such violation is here alleged. It follows that the complaint should be, and is, dismissed.

The scope of this proceeding is set forth in the complaint and answer. We confirm ALJ Walker as the presiding officer. The presiding officer's decision has been filed with the Commission and is being served on all parties pursuant to Pub. Util. Code § 1701.2.

Findings of Fact

1. Complainants are located in the Dixon LATA exchange.
2. By error, Pacific assigned complainants a Vacaville exchange number.
3. The error was discovered when Pacific investigated whether telephone numbers in complainants' neighborhood had been correctly assigned.
4. The investigation identified 19 customers in the Dixon exchange who had incorrectly been given Vacaville exchange numbers (including complainants) and three customers in the Vacaville exchange who had incorrectly been assigned Dixon exchange numbers.
5. Pacific has notified the 22 customers that their telephone numbers will be changed to the correct Vacaville or Dixon exchange.
6. Leaving the errors uncorrected would put Pacific in the position of knowingly violating its tariffs and knowingly providing prohibited interLATA service to these customers.
7. A hearing in this matter was conducted on October 25, 2001, in Vacaville, but complainants failed to appear.

Conclusions of Law

1. Complainants have not alleged or shown that Pacific's actions violate the law or any rule or order of this Commission.
2. The complaint should be dismissed.

O R D E R

IT IS ORDERED that:

1. The complaint of Skip and Gail Thomson against Pacific Bell Telephone Company (Pacific) is dismissed.
2. Pacific will make its change to complainant's telephone service and will provide number referral for six months at no cost to complainants.
3. Case 01-04-028 is closed.

This order is effective today.

Dated _____, at San Francisco, California.